

REMARKS

Before entry of this Amendment, claims 1-27 were pending in the application.

Claims 6-9, 11, 14, 17-19, 21-24, 26 and 27 have been withdrawn from consideration.

After entry of this Amendment claims 1-5, 10, 12, 13, 15, 16, 20 and 25 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicant has carefully considered the Examiner's Action of December 8, 2009, and the references cited therein. The following is a brief summary of the Action. Claims 1-5, 10, 12, 13, 15, 16, 20 and 25 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 1-3, 5, 10, 12, 13, 20 and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al (USP 6,354,296). Claims 4, 15 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al in view of Niemeyer (USP 4,951,664).

Applicant has amended each of claims 1 and 12 to eliminate the phrase that occasioned the rejection under 35 U.S.C. 112, first paragraph. Accordingly, applicant respectfully submits that claims 1-5, 10, 12, 13, 15, 16, 20 and 25, as presented herein, are patentable under 35 U.S.C. 112, first paragraph.

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-3, 5, 10, 12, 13, 20 and 25 under 35 U.S.C. 102(b) as being anticipated by Baumann et al.

Applicant has amended each of claims 1 and 12 to clarify that the baffle layer, which is included in the body portion, is configured to cover the user's mouth and at

least part of the user's nose. Support for this limitation is found in applicant's FIGs. 1, 3, 7 and 8 for example in which the FIG. 7 cross section, which shows the baffle 16, is taken in FIG. 1 in the region of the mouth and nose, and as explained at line 1 of applicant's specification FIG. 8 shows a perspective view of the baffle layer 16 used in Figs. 3 and 7. Moreover, lines 18 – 19 of page 3 of applicant's specification states that “[t]he body portion has a baffle layer” and lines 25 – 26 of page 3 of applicant's specification states that “[t]he baffle layer may constitute the sole layer of the body portion”. Likewise see also lines 2 – 4 of page 12 of applicant's specification. Thus, if the body portion is configured to cover the user's mouth and at least part of the user's nose, and the baffle layer constitutes the sole layer of the body portion, then it follows logically that the baffle layer must be configured to cover the user's mouth and at least part of the user's nose.

Baumann et al fails to disclose a baffle layer that is configured to cover the user's mouth and at least part of the user's nose.

Applicant therefore respectfully submits that claims 1-3, 5, 10, 12, 13, 20 and 25 are patentable under 35 U.S.C. 102(b) over Baumann et al.

As to claim 3 in particular, Baumann et al Figs. 4a and 4b notwithstanding, Baumann et al fails to disclose an embodiment in which a first layer contacts the projections of the Baumann et al baffle layer 12 and a third layer contacts the inner surface of the Baumann et al baffle layer 12. Accordingly, applicant therefore respectfully submits that claim 3 is patentable under 35 U.S.C. 102(b) over Baumann et al for this additional reason.

For the reasons explained below, applicants respectfully traverse the rejection of claims 4, 15 and 16 under 35 U.S.C. 103(a) as being unpatentable over Baumann et al in view of Niemeyer (USP 4,951,664).

Niemeyer fails to correct the deficiencies noted above in Baumann et al.

Applicant therefore respectfully submits that claims 4, 15 and 16 are patentable under 35 U.S.C. 103(a) over Baumann et al in view of Niemeyer.

Applicant respectfully requests reconsideration and reexamination of claims 1-5, 10, 12, 13, 15, 16, 20 and 25, as presented herein, and submits that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

DORITY & MANNING, P.A.

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James M. Bagarazzi
Reg. No: 29,609
P.O. Box 1449
Greenville, SC 29602
Telephone: 864-271-1592
Facsimile: 864-233-7342